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FINNEGAN, HENDERSON, FARABOW, GARRETT & DUNNER LLP 901 NEW YORK AVENUE, NW WASHINGTON, DC 20001-4413			EXAMINER HENRY, RODNEY M	
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**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

### Office Action Summary

**Application No.**

10/633,613

**Applicant(s)**

BRUCKER ET AL.

**Examiner**

RODNEY M. HENRY

**Art Unit**

3622

**Period for Reply** -- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 13 January 2009.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-48 is/are pending in the application.
- 4a) Of the above claim(s) 7, 15, 28-32, 39, 42 and 43 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-6, 8-14, 16-27, 33-38, 40, 41 and 44-48 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 05 August 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-849)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

### **DETAILED ACTION**

1. The following is a non-final office action on the merits. Examiner acknowledges receipt of communications from the Applicant dated 2/27/2009, where Claims 1, 2, 8, 9, 11-13, 25, 26, 33-38, 40, and 41 were amended, and claims 45-48 were added. Therefore, claims 1-6, 8-14, 16-27, 33-38, 40, 41, and 44-48 are currently pending and have been considered below.

### **Continued Examination Under 37 CFR 1.114**

2. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 2/27/2009 has been entered.

### ***Claim Rejections - 35 USC § 101***

35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

3. Claims 1-14, 18-24, 16, 17, and 44 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter.

Regarding claims 1-14, 18-24, 16, 17, and 44, as best understood, it appears that the claimed method steps are not statutory. Based on Supreme Court precedent<sup>1</sup> and Federal Circuit decisions a §101 process must

(1) be meaningfully tied to another statutory class (such as a particular apparatus) or

(2) transform underlying subject matter (such as an article or materials) to a different state or thing.<sup>2</sup>

The independent claim is directed towards steps of "broadcasting", "obtaining", and "customizing". Since the claims are directed to a method or a process without imposing meaningful limits on the method claim's scope (beyond data gathering and outputting, as two examples), these claims are non-statutory. The preamble covers a processor, but does not specifically discuss the process in the body of the claim. Additionally, the independent claim covers a broadcast network without specifically claiming the components of the broadcast network.

### **Claim Rejections - 35 USC § 103**

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the

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<sup>1</sup> *Diamond v. Diehr*, 450 U.S. 175, 184 (1981); *Parker v. Flook*, 437 U.S. 584, 588 n.9 (1978); *Gottschalk v. Benson*, 409 U.S. 63, 70 (1972); *Cochrane v. Deener*, 94 U.S. 780, 787-88 (1876).

<sup>2</sup> The Supreme Court recognized that this test is not necessarily fixed or permanent and may evolve with technological advance. *Gottschalk v. Benson*, 409 U.S. 63, 71 (1972).

subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains.

Patentability shall not be negated by the manner in which the invention was made.

**5. Claims 1, 10, 11, 14, 16, 17, 21, 25, 26, 33, 40, 42, 43, 44, 46, 47 and 17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Humplemen et al. (US 20030018969), in view of Albright (October 2, 2000, Knight-Ridder Tribune News, St. Petersburg Times – Florida), in view of Walker et al. (US 2004/0243478), and further in view of Walker et al. (US 6,216,111).**

**As per claim 1**, Humpleman et al. discloses a processor-broadcasting over a broadcast network a program, the program containing information about the mass consumer product (See page 4, paragraph [0059], which discusses the coupon strategy for generating leads and for driving store traffic for the purposes of test driving Volkswagen Turbo Bug).

Humpleman et al. does not explicitly disclose broadcasting a program of at least about 10 minutes in duration, the program containing information about the mass consumer product;

However Albright discloses the use of infomercials of 10 minutes to promote products to a viewing audience. The Infomercial Awards Conference held at Las Vegas Nevada in 2000 had discussions about the Home Shopping Network (HSN) in St. Petersburg, Florida being one of the epicenters of infomercial production and further discussed that HSN began airing 30-minute shows on USA Network, Sci-Fi Channel and FoxSports Network (Page 3, paragraph 4).

Therefore, it would have been obvious to one having ordinary skill in the art to add broadcasting of direct marketing programs of at least 10 minutes in duration as to the system of Humpleman et al. in order to utilize the attention grabbing opportunity to fully market consumer products to a wide viewing audience.

Humpleman et al. does not explicitly disclose providing contact information for consumers to use to request an incentive associated with a prospective purchase of the product, the incentive being associated with a unique code for tracking usage of the incentive to obtain information related to marketing the product.

However, Walker et al. discloses providing contact information for consumers to use to request an incentive associated with a prospective purchase of the product, the incentive being associated with a unique code for tracking usage of the incentive to obtain information related to marketing the product (see paragraphs [0204], [0294], and [0122]).

Therefore, it would have been obvious to one having ordinary skill in the art to add providing contact information for consumers to use to request an incentive associated with a prospective purchase of the product, the incentive being associated

with a unique code for tracking usage of the incentive to obtain information related to marketing the product to the system of Humpleman et al. in order to effectively manage the distribution and tracking of incentives such as coupons made available to consumers.

Humpleman et al. does not explicitly disclose obtaining personal information from the consumers; and

customizing the incentive based on the obtained personal information such that the incentive relates to purchase of an item suited for an individual having the obtained personal information.

However, Walker et al. ('6111) discloses obtaining personal information from the consumers; and

customizing the incentive based on the obtained personal information such that the incentive relates to purchase of an item suited for an individual having the obtained personal information (See col 3, lines 42-57).

Therefore, it would have been obvious to one having ordinary skill in the art to add obtaining personal information from the consumers; and customizing the incentive based on the obtained personal information such that the incentive relates to purchase of an item suited for an individual having the obtained personal information to the system of Humpleman et al. in order to peak the interest of the consumer.

**As per claim 10**, Humpleman et al. discloses transmitting the incentive to consumers (See page 4, paragraph [0067], which discusses offers downloaded by the viewer).

**As per claim 11**, Humpleman et al. discloses transmitting further information about the product to the consumers along with the incentive (See page 4, paragraph [0060], which discusses links providing access to additional video messages or product information or offers).

**As per claim 12**, Humpleman et al., does not explicitly disclose the further information includes individualized advice related to the mass consumer product and based on the obtained personal information.

Walker et al. ('6111) discloses the further information includes individualized advice related to the mass consumer product and based on the obtained personal information (See col 3, lines 42-55)

Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to add individualized advice related to the mass consumer product and based on the obtained personal information to the system of Humpleman et al. in order to ensure the customer is most satisfied with the product.

**As per claim 14**, Humpleman et al., does not disclose where broadcasting the program includes broadcasting a program of approximately one half of an hour in duration.

However, Albright teaches the Infomercial Awards Conference held at Las Vegas Nevada in 2000 and the Home Shopping Network (HSN) in St. Petersburg, Florida being one of the epicenters of infomercial production having broadcasting the program includes broadcasting a program of approximately one half of an hour in duration (See



page 3, paragraph 4, which discusses HSN began airing 30-minute shows on USA Network, Sci-Fi Channel and FoxSports Network).

Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify Humpleman et al. to include broadcasts of direct marketing programs of approximately one half of an hour in duration as taught by Albright via HSN in order to utilize the attention grabbing opportunity to fully market consumer products to a wide viewing audience.

**As per claim 21, Humpleman et al.,**

discloses a coupon for purchasing the product at a reduced price and the method further comprises transmitting the coupon to the consumer (see paragraphs [0067], and [0090]).

**As per claim 25, Humpleman et al., discloses the broadcasting over**

a network includes broadcasting the program over a television network (See page 2, paragraph [0015], which discusses providing a broadcast supply of targeted advertising content in a television broadcast system).

**As per claims 26, 47 Humpleman et al., discloses the broadcasting  
over**

a network includes broadcasting the program over at least one of radio, television, satellite, cable, computer, and internet networks (See page 2, paragraph [0015], which

discusses providing a broadcast supply of targeted advertising content in a television broadcast system).

**As per claim 33**, Humpleman et al. discloses a system for marketing a mass consumer product over a broadcast network comprising: a broadcast component for broadcasting over a broadcast network (See page 4, paragraph [0059], which discusses the viewer being offered \$100 for taking a test drive of the Volkswagen),

the incentive being described in the program as redeemable by the consumers during a visit to at least one of the retail establishment at the time of obtaining the product (See page 5, paragraph [0067], which discusses the user being able to redeem offers downloaded by a viewer by having a smart card transmit the savings to in-store point of sale devices).

Humpleman et al. does not explicitly disclose broadcasting a program of at least about 10 minutes in duration, the program containing information about the mass consumer product;

However Albright discloses the use of infomercials of 10 minutes to promote products to a viewing audience. The Infomercial Awards Conference held at Las Vegas Nevada in 2000 had discussions about the Home Shopping Network (HSN) in St. Petersburg, Florida being one of the epicenters of infomercial production and further discussed that HSN began airing 30-minute shows on USA Network, Sci-Fi Channel and FoxSports Network (Page 3, paragraph 4).

Therefore, it would have been obvious to one having ordinary skill in the art to add broadcasting of direct marketing programs of at least 10 minutes in duration as to the system of Humpleman et al. in order to utilize the attention grabbing opportunity to fully market consumer products to a wide viewing audience.

Humpleman et al. does not explicitly disclose providing contact information for consumers to use to request an incentive associated with a prospective purchase of the product, the incentive being associated with a unique code for tracking usage of the incentive to obtain information related to marketing the product.

However, Walker et al. discloses providing contact information for consumers to use to request an incentive associated with a prospective purchase of the product, the incentive being associated with a unique code for tracking usage of the incentive to obtain information related to marketing the product (see paragraphs [0204], [0294], and [0122]).

Therefore, it would have been obvious to one having ordinary skill in the art to add providing contact information for consumers to use to request an incentive associated with a prospective purchase of the product, the incentive being associated with a unique code for tracking usage of the incentive to obtain information related to marketing the product to the system of Humpleman et al. in order to effectively manage the distribution and tracking of incentives such as coupons made available to consumers.

Humpleman et al. does not explicitly disclose a data component for obtaining personal information from the consumers; and

an incentive component for customizing the incentive based on the obtained personal information such that the incentive relates to purchase of an item suited for an individual having the obtained personal information.

However, Walker et al. ('6111) discloses a data component for obtaining personal information from the consumers; and

an incentive component for customizing the incentive based on the obtained personal information such that the incentive relates to purchase of an item suited for an individual having the obtained personal information (See col 3, lines 42-57).

Therefore, it would have been obvious to one having ordinary skill in the art to add obtaining personal information from the consumers; and customizing the incentive based on the obtained personal information such that the incentive relates to purchase of an item suited for an individual having the obtained personal information to the system of Humpleman et al. in order to peak the interest of the consumer.

**As per claim 40, Humpleman et al., does not disclose**  
the program being approximately one half of an hour in duration the program.

However Albright discloses the program being approximately one half of an hour in duration the program (Page 3, paragraph 4).

Therefore, it would have been obvious to one having ordinary skill in the art to add program being approximately one half of an hour in duration the program to the system of Humpleman et al. in order to utilize the attention grabbing opportunity to fully market consumer products to a wide viewing audience.

**As per claim 44, Humpleman et al. does not explicitly disclose**  
tracking usage of the incentive via the unique tracking code

However, Walker et al. ('3478) discloses tracking usage of the incentive via the unique tracking code (see paragraphs [0122]).

Therefore, it would have been obvious to one having ordinary skill in the art to add incentives associated with a unique code for tracking usage of the incentive to obtain information related to marketing the product to the system of Humpleman et al. in order to develop a historical database of consumer information to be used for future marketing purposes.

**As per claim 16, Humpleman et al., does not disclose**  
tracking usage of the incentive further comprises tracking whether code provide information on redemption of the incentive has been redeemed and obtaining information on consumers who redeemed the incentive.

However, Walker et al. discloses tracking usage of the incentive further comprises tracking whether code provide information on redemption of the incentive has been redeemed and obtaining information on consumers who redeemed the incentive (See paragraphs [0180], [0226]).

Therefore, it would have been obvious to one having ordinary skill in the art to add tracking usage of the incentive further comprises tracking whether code provide information on redemption of the incentive has been redeemed and obtaining

information on consumers who redeemed the incentive to the system of Humpleman et al. in order to determine which incentives need to be kept active or to be changed.

**As per claim 17**, Humpleman et al., does not disclose tracking usage of the incentive further comprises, generating profiles of the consumers who redeemed the incentive and categorizing the consumers based on the profiles.

However, Walker et al. discloses tracking usage of the incentive further comprises, generating profiles of the consumers who redeemed the incentive and categorizing the consumers based on the profiles (See paragraphs [0180], [0226]).

Therefore, it would have been obvious to one having ordinary skill in the art to add tracking usage of the incentive further comprises, generating profiles of the consumers who redeemed the incentive and categorizing the consumers based on the profiles to the system of Humpleman et al. in order to develop a historical database of consumer information to be used for future marketing purposes, and for adapting incentives to particular customers.

**As per claim 46**, Humpleman et al. **does not explicitly disclose** the data component comprises at least one of an interactive voice response system and a web server.

However, Walker et al. ('3478) discloses the data component comprises at least one of an interactive voice response system and a web server. (see paragraph [0124] and FIG. 1B).

Therefore, it would have been obvious to one having ordinary skill in the art to add the data component comprises at least one of an interactive voice response system and a web server to the system of Humpleman et al. in order to make the system more user friendly.

**6. Claims 2-6, 18, 27, 34-38, and 41 are rejected under 35 U.S.C. 103(a) as being unpatentable over Humpleman et al. (US 20030018969), in view of Albright (October 2, 2000, Knight-Ridder Tribune News, St. Petersburg Times – Florida), in view of Walker et al. (US 2004/0243478), and further in view of Walker et al. (US 6,216,111), and further in view of Skin Care and Acne Treatment Products from Proactiv Solution Infomercial by Guthy-Renker**

**As per claim 2, Humpleman et al., does not explicitly disclose**  
demonstrating how to use the product during the broadcasting of the program.

However, Guthy-Renker teaches the Rodan and Fields Proactiv Acne Treatment Solution having demonstrations on how to use the product (See Infomercial (Skin Care and Acne Treatment Products from Proactiv Solution, which demonstrates the model showing the ease of applying the three step process))

Therefore, it would have been obvious to one having ordinary skill in the art at

the time the invention was made to modify Humpleman et al. to include demonstration on how to use the product as taught by Guthy-Renker in order to provide the consumer with live demonstration on usage of the product.

**As per claim 3, Humpleman et al., does not explicitly disclose**

demonstrating includes having at least one individual use the product.

However, Guthy-Renker teaches the Rodan and Fields Proactiv Acne Treatment Solution having at least one individual demonstrate use of the product (See Infomercial (Skin Care and Acne Treatment Products from Proactiv Solution, which demonstrates the model showing the ease of applying the three step process)).

Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify Humpleman et al. to include demonstration at least one individual using the product as taught by Guthy-Renker in order to provide the consumer with a live testimonial about the product.

**As per claim 4, Humpleman et al., does not explicitly disclose**

demonstrating includes having multiple individuals use the product and describe their use of the product.

However Guthy-Renker teaches the Rodan and Fields Proactiv Acne Treatment Solution having multiple individuals demonstrate use of the product and describe their use of the product (See Infomercial (Skin Care and Acne Treatment Products from Proactiv Solution, which shows the before and after testimonials of individuals who used the product)).



Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify Humpleman et al. to include demonstrations of multiple individuals using the product as taught by Guthy-Renker in order to provide the consumer with several live testimonials about the product.

**As per claim 5, Humpleman et al. does not explicitly disclose**  
the individual is an individual whose likeness appears on packaging associated with the product.

Guthy-Renker teaches the Rodan and Fields Proactiv Acne Treatment Solution having an individual whose likeness appears on packaging associated with the product (See Infomercial (Skin Care and Acne Treatment Products from Proactiv Solution, which shows the likeness of models on the brochure that is mailed along with the packaging)).

Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify Humpleman et al. to include an individual whose likeness appears on packaging associated with the product as taught by Guthy-Renker in order to provide the consumer with reinforced product recognition by maintaining the consistency of keeping the individual who was part of the demonstration and usage of the product during the infomercial with the packaging material as well.

**As per claim 6, Humpleman et al., does not explicitly disclose**  
the individual is an individual whose likeness appears on advertising material associated with the product.

Guthy-Renker teaches the Rodan and Fields Proactiv Acne Treatment Solution having an individual whose likeness appears on advertising material associated with the product (See Infomercial (Skin Care and Acne Treatment Products from Proactiv Solution, which shows the likeness of models such as Venessa Williams and Stephanie Moore on the advertising material)).

Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify Humpleman et al. to include an individual whose likeness appears on adverting material associated with the product as taught by Guthy-Renker in order to provide the consumer with reinforced product recognition by maintaining the consistency of keeping the individual who was part of the demonstration, usage, and packaging of the product during the infomercial, with the advertising material as well.

**As per claim 18, Humpleman et al., does not explicitly disclose** the product comprises a personal care product, the application of which is designed to occur in multiple steps, and wherein the information contained in the program includes at least one demonstration of the multiple steps.

Guthy-Renker teaches the Rodan and Fields Proactiv Acne Treatment Solution having a personal care product (Proactiv acne skin treatment), the application of which is designed to occur in multiple steps, and wherein the information contained in the program includes at least one demonstration of the multiple steps (See Infomercial (Skin Care and Acne Treatment Products from Proactiv Solution), which demonstrates the three step process).

Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify Humpleman et al. to include a personal care product, the application of which is designed to occur in multiple steps, and wherein the information contained in the program includes at least one demonstration of the multiple steps as taught by Guthy-Renker in order to teach the customer the ease of using the product.

**As per claim 27**, Humpleman et al., does not explicitly disclose the mass consumer product is at least one of a personal care product and a cosmetic product.

Guthy-Renker teaches the Rodan and Fields Proactiv Acne Treatment Solution having the mass consumer product is at least one of a personal care product and a cosmetic product (See Infomercial (Skin Care and Acne Treatment Products from Proactiv Solution), which markets the Proactive acne skin treatment).

Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify Humpleman et al. to include a personal care product as taught by Guthy-Renker in order provide the customer with personal care products.

**As per claim 34**, Humpleman et al., does not explicitly disclose a demonstration of how to use the product.

Guthy-Renker teaches the Rodan and Fields Proactiv Acne Treatment Solution

having demonstrations on how to use the product (See Infomercial (Skin Care and Acne Treatment Products from Proactiv Solution, which demonstrates the model showing the ease of applying the three step process))

Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to add a demonstration on how to use the product as to the system of Humplemen et al. in order to provide the consumer with live demonstration on usage of the product.

**As per claim 35, Humpleman et al., does not explicitly disclose**  
a demonstration wherein at least one individual uses the product.

Guthy-Renker teaches the Rodan and Fields Proactiv Acne Treatment Solution having at least one individual demonstrate use of the product (See Infomercial (Skin Care and Acne Treatment Products from Proactiv Solution, which demonstrates the model showing the ease of applying the three step process)).

Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to add a demonstration wherein at least one individual uses the product to the system of Humplemen et al. in order to provide consumers with a live testimonials about the product.

**As per claim 36, Humpleman et al., does not explicitly disclose**  
demonstrating includes having multiple individuals use the product and describe their use of the product.

Guthy-Renker teaches the Rodan and Fields Proactiv Acne Treatment Solution

having multiple individuals demonstrate use of the product and describe their use of the product (See Infomercial (Skin Care and Acne Treatment Products from Proactiv Solution, which shows the before and after testimonials of individuals who used the product)).

Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to add a demonstration of multiple individuals using the product to the system of Humplemen et al. in order to provide the consumer with several live testimonials about the product.

**As per claim 37, Humpleman et al. does not explicitly disclose**  
disclose the individual is an individual whose likeness appears on packaging associated with the product.

Guthy-Renker teaches the Rodan and Fields Proactiv Acne Treatment Solution having an individual whose likeness appears on packaging associated with the product (See Infomercial (Skin Care and Acne Treatment Products from Proactiv Solution, which shows the likeness of models on the brochure that is mailed along with the packaging)).

Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to add an individual whose likeness appears on packaging associated with the product to the system of Humplemen et al. in order to provide the consumer with reinforced product recognition by maintaining the consistency of keeping the individual who was part of the demonstration and usage of the product during the infomercial with the packaging material as well.

**As per claim 38**, Humpleman et al., does not explicitly disclose the individual is an individual whose likeness appears on advertising material associated with the product.

Guthy-Renker teaches the Rodan and Fields Proactiv Acne Treatment Solution having an individual whose likeness appears on advertising material associated with the product (See Infomercial (Skin Care and Acne Treatment Products from Proactiv Solution, which shows the likeness of models such as Venessa Williams and Stephanie Moore on the advertising material)).

Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to add an individual whose likeness appears on adverting material associated with the product to the system of Humplemen et al. in order to provide the consumer with reinforced product recognition by maintaining the consistency of keeping the individual who was part of the demonstration, usage, and packaging of the product

**As per claim 41**, Humpleman et al., does not explicitly disclose the product comprises a personal care product, the application of which is designed to occur in multiple steps, and wherein the information contained in the program includes at least one demonstration of the multiple steps.

Guthy-Renker teaches the Rodan and Fields Proactiv Acne Treatment Solution having a personal care product (Proactiv acne skin treatment), the application of which is designed to occur in multiple steps, and wherein the information contained in the

program includes at least one demonstration of the multiple steps (See Infomercial (Skin Care and Acne Treatment Products from Proactiv Solution), which demonstrates the three step process).

Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to add a personal care product, the application of which is designed to occur in multiple steps, and wherein the information contained in the program includes at least one demonstration of the multiple steps to the system of Humplemen et al. in order to provide the customer the ease of using the product.

**7. Claim 8 is rejected under 35 U.S.C. 103(a) as being unpatentable over Humpleman et al. (US 20030018969), and Albright (October 2, 2000, Knight-Ridder Tribune News, St. Petersburg Times – Florida), in view of Meyer et al. (US 6,915,271), and further in view of Total Gym Infomercial by Engineering Fitness International.**

**As per claim 8,** Humpleman et al., does not explicitly disclose the contact information is at least one of a telephone number and an internet address.

Engineering Fitness International (EFI) Sports Medicine teaches the Total Gym Infomercial having Engineering Fitness International (EFI) Sports Medicine teaches the Total Gym Infomercial having contact information for consumers to use to request the incentive)

(See Total Gym Infomercial, which shows the contact information, phone numbers and website for requesting the incentive (discounts)).

Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify Humpleman et al. to include contact information for consumers to use to request the incentive as taught by EFI in order to provide the consumer with an incentive for purchasing the product and the means to do so.

**8. Claim 9 is rejected under 35 U.S.C. 103(a) as being unpatentable over Humpleman et al. (US 20030018969), Albright (October 2, 2000, Knight-Ridder Tribune News, St. Petersburg Times – Florida), in view of Meyer et al. (US 6,915,271), in view of Total Gym Infomercial by Engineering Fitness International (EFI), and further in view of Examiner's Official Notice.**

**As per claim 9**, Humpleman et al., does not explicitly disclose that the program provides contact information a plurality of times during the program.

Examiner takes Official Notice that it is old and well known in the art to provide contact information consumers several times during a television program or infomercial of incentives.

Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify Humpleman et al., to include encouraging a plurality of times during the program as taught by Examiner's Official Notice in order to



ensure that the consumer makes the purchase within a short time period after listening to the infomercial, and preferably during the show.

**9. Claim 13 is rejected under 35 U.S.C. 103(a) as being unpatentable over Humplemen et al. (US 20030018969), in view of Albright (October 2, 2000, Knight-Ridder Tribune News, St. Petersburg Times – Florida), in view of Walker et al. (US 2004/0243478), in view of Walker et al. (US 6,216,111), and further in view of Landesmann (US 6,735,572).**

**As per claim 13**, Humpleman et al., does not explicitly disclose that the further information includes a list of retail establishments that carry the product and are in geographical proximity to respective locations of the consumers.

Landesmann teaches buyer-driven targeting of purchasing entities having information that includes a list of retail establishments that carry the product and are in geographical proximity to respective locations of the consumers (See page 22, lines 12-14, which discusses the consumer being able to ask for information on the stores in his immediate vicinity that are offering the promotion).

Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify Humpleman et al. to include other information that includes a list of retail establishments that carry the product and are in geographical proximity to respective locations of the consumers as taught by

Landesmann in order to provide the consumer with the closest stores that carry the product and the promotion.

**10. Claim 19 is rejected under 35 U.S.C. 103(a) as being unpatentable over Humplemen et al. (US 20030018969), in view of Albright (October 2, 2000, Knight-Ridder Tribune News, St. Petersburg Times – Florida), in view of Walker et al. (US 2004/0243478), in view of Walker et al. (US 6,216,111), and in view of Skin Care and Acne Treatment Products from Proactiv Solution Infomercial by Guthy-Renker, and further in view of Baxter (US 5,335,679).**

**As per claim 19**, Humpleman et al., does not explicitly disclose that the product comprises a hair coloring kit for performing a multi-step hair coloring process.

Baxter teaches a device and process for use in coloring hair having a hair coloring kit for performing a multi-step hair coloring process (See FIGS. 6-11)

Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify Humpleman et al., to include the product comprises a hair coloring kit for performing a multi-step hair coloring process as taught by Baxter in order to provide customers with personal care products that includes hair care products as well.

**11. Claim 20 is rejected under 35 U.S.C. 103(a) as being unpatentable over Humplemen et al. (US 20030018969), in view of Albright (October 2, 2000, Knight-Ridder Tribune News, St. Petersburg Times – Florida), in view of Walker et al. (US 2004/0243478), in view of Walker et al. (US 6,216,111), in view of Skin Care and Acne Treatment Products from Proactiv Solution Infomercial by Guthy-Renker, in view of Baxter (US 5,335,679), and further in view of Patel et al. (US 6,770,103).**

**As per claim 20,** Humpleman et al., does not explicitly disclose that the multi-step hair coloring process comprises applying highlighting material to moist hair and the demonstrating includes demonstrating the applying of the highlight material to moist hair.

Patel et al. teaches a method and composition for the gradual permanent coloring of hair comprises a hair coloring kit for performing a multi-step hair coloring process having the multi-step hair coloring process comprises applying highlighting material to moist hair and the demonstrating includes demonstrating the applying of the highlight material to moist hair (See page 12, lines 23-27, which discusses the steps for using the hair coloring as follows: Shampoo the hair as usual. Pump the composition of the invention into the palm and mix. Apply product to the hair like a regular conditioner.

Rinse the hands. Leave product in the hair for about 2 minutes for color maintenance to about 5 minutes for color change. Rinse the hair thoroughly)

Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify Humpleman et al., to that the multi-step hair coloring process comprises applying highlighting material to moist hair and the demonstrating includes demonstrating the applying of the highlight material to moist hair as taught by Patel et al. in order to provide customers with the option of using a wet or moist hair coloring treatment method.

**12. Claims 22, 24 and 48 are rejected under 35 U.S.C. 103(a) as being unpatentable over Humplemen et al. (US 20030018969), in view of Albright (October 2, 2000, Knight-Ridder Tribune News, St. Petersburg Times – Florida), in view of Walker et al. (US 2004/0243478), in view of Walker et al. (US 6,216,111), and further in view of Von Kohorn (US 6,443,840).**

**As per claim 22**, Humpleman et al., does not explicitly disclose where the incentive includes a rebate received by the consumer for mention of the program upon obtaining the product during a visit to at least one of the retail establishments.

Von Kohorn teaches evaluation of responses of participatory broadcast audience with prediction of winning contestants; monitoring, checking and controlling of wagering, and automatic crediting and couponing having the incentive include a rebate

received by the consumer for mention of the program upon obtaining the product during a visit to at least one of the retail establishments (See column 45, lines 25-30, which discusses the viewers verifying that they are tuned in to the desired program. This method can be employed when discontinued items, or "loss leaders", are intended to lead customers to a store, in which case more valuable prizes are awarded for relatively easy answers. Column 74, line 31 discusses prizes as tokens. Column 132, lines 28-29 discusses token as a rebate check).

Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to add incentive includes a rebate received by the consumer for mention of the program upon obtaining the product during a visit to at least one of the retail establishments to the system of Humpleman et al. in order to provide the consumer with an added incentive of visiting a retail location where the advertised product and perhaps other products are sold.

**As per claim 24**, Humpleman et al., does not explicitly disclose where the incentive includes a free gift to the consumer upon mention of the program and obtaining the product during a visit to at least one of the retail establishments.

Von Kohorn teaches evaluation of responses of participatory broadcast audience with prediction of winning contestants; monitoring, checking and controlling of wagering, and automatic crediting and couponing having the incentive includes a free gift to the consumer upon mention of the program and obtaining the product during a visit to at least one of the retail establishments (See column 45, lines 25-30, which discusses the viewers verifying that they are tuned in to the desired program. This

method can be employed when discontinued items, or "loss leaders", are intended to lead customers to a store. Column 93, lines 47-49, which discusses gifts presented by an advertiser).

Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to incentives include a free gift to the consumer upon mention of the program and obtaining the product during a visit to at least one of the retail establishments to the system of Humplemen et al. in order to provide the consumer with gift incentives of visiting a retail location where the advertised product and perhaps other products are sold.

**As per claim 48, Humpleman et al., does not explicitly disclose**  
a transmitter for transmitting the incentive to consumers..

Von Kohorn discloses a transmitter for transmitting the incentive to consumers.  
(See col 6, lines 3-29).

Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to add a transmitter for transmitting the incentive to consumers to the system of Humpleman et al. in order to facilitate the customers receiving coupons from customers.

**13. Claims 23, and 45 are rejected under 35 U.S.C. 103(a) as being unpatentable over Humplemen et al. (US 20030018969), in view of Albright (October 2, 2000, Knight-Ridder Tribune News, St. Petersburg Times – Florida), in view of Walker et al. (US 2004/0243478), in view of**

**Walker et al. (US 6,216,111), and further in view of Packes, Jr. et. al. (US 7,006,983).**

**As per claim 23,** Humpleman et al., does not explicitly disclose where the incentive includes a mail-in rebate certificate which is received by the consumer by mentioning the program upon obtaining the product during a visit to at least-one of the retail establishments.

Packes, Jr et al. teaches a method and system for processing a mail-in-rebate certificate (See Abstract, which discusses a point of sale (POS) rebate method and system allows a consumer purchasing a product having an associated manufacturer's mail-in rebate to redeem the rebate at the POS).

Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to add incentives that include a mail-in rebate certificate which is received by the consumer by mentioning the program upon obtaining the product during a visit to at least-one of the retail establishments to the system of Humplamen et al. in order to provide the consumer with mail-in-rebates that can be redeemed at the POS, thereby mitigating the usual problem with rebates of missing the main-in dates or simply forgetting to mail it in.

**As per claim 45,** Humpleman et al., does not explicitly disclose restricting the incentive such that the incentive can only be redeemed at a retail establishment at the time of obtaining the produc.

Packes, Jr et al. discloses restricting the incentive such that the incentive can only be redeemed at a retail establishment at the time of obtaining the product (See col 9, lines 51-56).

Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to add restricting the incentive such that the incentive can only be redeemed at a retail establishment at the time of obtaining the product to the system of Humpleman et al. in order to ensure customers purchase the product at particular retail locations.

#### ***Response to Arguments***

14. The applicant's arguments are moot in light of the new grounds of rejection above.

Also, on page 12, the Applicant argues that the finality of the Office Action dated September 2, 2008 was improper according to MPEP § 706.07(a). The Examiner maintains that the finality of the Office Action dated September 2, 2008 was proper, because the Applicant amended the claims. Claim 1 was amended to include, "the incentive being associated with a unique code for tracking usage of the incentive to obtain information related to marketing the product". The Applicant's amendment necessitated the new ground(s) of rejection presented in the Office action dated September 2, 2008, as well as a new search.

#### ***Conclusion***

15. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Rodney M. Henry whose telephone number is 571-270-



5102. The examiner can normally be reached on Monday through Thursday from 7:30am to 6:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Eric Stamber can be reached on 571-272-6724. The fax phone number for the organization where this application or proceeding is assigned is 571-270-6102.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

RMH

/Arthur Duran/

Primary Examiner, Art Unit 3622